

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION**

JOHN A. FULKERSON

PETITIONER

VERSUS

CIVIL ACTION NO. 5:06cv174-DCB-MTP

CONSTANCE REESE, Warden

RESPONDENT

ORDER

This cause comes before the Court on the pro se petitioner's Motion to Correct or Void Judgment and Reconsider Habeas Petition [docket entry no. 28]. Having carefully considered the Motion, applicable statutory and case law, and being otherwise fully advised as to the premises, the Court finds and order as follows:

In his Motion, the petitioner asks the Court to set aside its August 22, 2007 Order [docket entry no. 23] wherein it adopted Magistrate Judge Michael T. Parker's July 30, 2007 Report and Recommendation [docket entry no. 22] that the action be dismissed for the petitioner's failure to exhaust available administrative remedies, as well the Court's August 22, 2007 Judgment [docket entry no. 24] dismissing the case without prejudice.

The petitioner insists that the Court should have considered his untimely August 28, 2007 Objections [docket entry no. 27] to the magistrate judge's Report and Recommendation before it adopted the Report and Recommendation and entered its Judgment dismissing the case. The petitioner alleges that mail delivery problems at his place of incarceration delayed the service of the Report and

Recommendation upon him until August 14, 2007.¹ The petitioner correctly asserts that his Objections to the magistrate judge's Report and Recommendation were timely if the ten day objection period is measured from this date.

In the interest of justice, the Court finds the petitioner's Motion to be well-taken. Upon re-opening the case, the Court will give a thorough consideration to the petitioner's Objections to the magistrate judge's Report and Recommendation. Accordingly,

IT IS HEREBY ORDERED that the pro se petitioner's Motion to Correct or Void Judgment and Reconsider Habeas Petition [docket entry no. 28] is **GRANTED**.

IT IS FURTHER ORDERED that the Court's Judgment [docket entry no. 24] dismissing the case without prejudice is **SET ASIDE**.

IT IS FURTHER ORDERED that the case is **REOPENED**.

IT IS FURTHER ORDERED that the Court's Order [docket entry no. 23] adopting the Report and Recommendation [docket entry no. 22] of Magistrate Judge Michael T. Parker is **WITHDRAWN**.

SO ORDERED, this the 14th day of December 2007.

s/David Bramlette
UNITED STATES DISTRICT JUDGE

¹ In support of his contention, the petitioner attaches an unsworn document purportedly signed by Unit Counselor Dennis Wright which declares that the petitioner received the Report and Recommendation on August 14, 2007.